ELECTION COMMISSION, INDIA,

1, AURANGZEB ROAD, NEW DELHI-11.

NOTIFICATION.

Dated 15th February 1963 (*Magha* 26, *Saka Era* 1884).

No. 82/15/62.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order pronounced on the 31st January 1963, by the Election Tribunal, Bangalore.

IN THE COURT OF THE ELECTION TRIBUNAL, BANGALORE.

Dated this 31st day of January 1963.

Present:

SRI R. HANUMANTHA RAO, B.A., LL.B., *Member.*

Election Petition No. 15 of 1962.

Petitioner:

Sri K. G. Thimmegowda, aged 48 years, son of Gurikar Venkataramanegowda, Hindu, Landholder, residing at Kanakapura, Bangalore District.

Vs.

Respondent:

Sri S. Kariyappa, B.A., aged 56 years, son of Putte Gowda, Hindu, President, Rural Education Society, residing at Kanakapura, Bangalore District.

Petition under Sections 80, 81 and 83 of the Representation of the People Act, 1951.

ORDER.

1. This is an Election petition under Section 80 of the Representation of the People Act, 1951 presented by Sri K. G. Thimmegowda, defeated Congress candidate against Sri S. Kariyappa, the returned candidate of the Swatantra Congress party for a declaration that the election of the Respondent is void on the grounds of corrupt practices, non-compliance with Rule 43 of the Conduct of Election Rules, 1961 and misrepresentation.

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2. The parties were candidates for the election to the Vidhana Sabha of the State of Mysore from the constituency of Kanakapura at the general elections held on 22nd February 1962. The Respondent who secured 21,055 votes as against 19,492 secured by the petitioner was declared duly elected on 25th February 1962.

3. It is stated that the lorry bearing No. MYE 1304 driven by one Nazir Ahmed who was subsequently prosecuted under the Motor Vehicles Act was first engaged for the purpose of conveying electors by Sri Budhadas who was a candidate for election to the Lok Sabha and was associated with the Respondent in the election campaign and that it had been sent by him to the Respondent, who made use of it for conveying the electors to and from the polling station Kadasivanahalli. Lorry No. MYE 4068 driven by one Mariappa was also used by the Respondent for conveying the electors to and from the polling station, Therubeedi.

4. It is further stated that the Respondent who happens to be the President of the Rural Education Society of Kanakapura, which runs the Rural College and the Rural High School at Kanakapura, and a Rural High School at Harohalli, interfered with and/or attempted to interfere with the free exercise of electoral rights by the electors by threatening the following students of the Rural High Schools at Kanakapura and Harohalli that, unless they induced their parents and other near relatives to record their votes for him they would be penalised in several ways such as by denying promotions, free studentship and admission to the Hostel :—

1. M. K. Nanjundarama Setty, son of Kanniah Setty, Maralavadi, Kanakapura Taluk, Student, High School II Year, Rural High School, Harohalli, Kanakapura Taluk.
2. S. Lakshmana Rao, son of Venkata Rao Shirode, Retired Military Officer, Maralavadi, Kanakapura Taluk, Student, High School I Year, Rural High School, Harohalli, Kanakapura Taluk.
3. Jayakumar, son of P. Choodegowda, Jodi Bachahalli, Maralavadi Hobli, Kanakapura Taluk, Student, Rural High School, Kanakapura.
4. A. Srinivasaiah, son of Arale Channiah, Tokasandra, Maralavadi Hobli, Kanakapura Taluk, Student, I Year, Rural High School, Harohalli, Kanakapura Taluk.
5. Venkataramana, son of Sadanalliah, Herindyapanahalli, Kodihalli Hobli, Kanakapura Taluk, Student, III Year Class, Rural High School, Kanakapura.
6. Mahadeviah, son of Doddalingegowda, Bannimukkodlu, Kanakapura Taluk, Student, I Year Class, Rural High School, Kanakapura.
7. Honne Gowda, son of Munigowda, Bhimagondanahalli, Kodihalli Hobli, Kanakapura Taluk, Student, I Year Class, Rural High School, Kanakapura.

5. The petitioner asserts that even if the alleged corrupt practices of hiring/or procuring lorries for the conveyance of electors and the use of undue

influence or any of them were not satisfactorily shown to have been committed by the Respondent or his election agent or other person with his consent, even then the election of the Respondent has been materially affected by the said corrupt practices, as but for them he would not have got the majority of votes.

6. As the polling officers at the following polling stations did not note down the names of the voters present at the station at 5 P.M. (the closing time) and issue slips showing that they were present at that hour and a large number of electors were admitted after 5 P.M. and allowed to record their votes, there has been non-compliance with Rule 43 of the Conduct of Election Rules, 1961, and this has materially affected the result of the election so far as it concerned the returned candidate.

(i) In one of the Polling Booths at Hosadurga (Polling Station No. 51).
(ii) Kadasivanahalli (Polling Station No. 40).
(iii) Doddakabballi (Polling Station No. 47).
(iv) Herindayapanahalli (Polling Station No. 42).
(v) Thungani (Polling Station No. 19).
(vi) Aralalusandra (Polling Station No. 20).
(vii) Hulibele (Polling Station No.37).
(viii) Turukara Hosahalli (Polling Station No. 8).
(ix) Jakkasandra (Polling Station No. 3).
(x) Maraluvadi (Polling Station No. 10).
(xi) Kanakapura Town (Polling Station No. 29).

7. The Respondent had applied to the Mysore Pradesh Congress Committee of the Congress party to be selected as a candidate to the Vidhana Sabha from Kanakapura Constituency and, on being not selected by the said Election Committee, he stood has a candidate in opposition to the petitioner who was selected by the said Committee. The Respondent was consequently expelled from the Congress party and debarred from its membership for six years. The Respondent with a view to mislead the voters in the said constituency described himself as a member of the Swatantra Congress party which is not a recognised party and issued (*a*) printed hand-bills as per copy produced marked 'A' (Ex. P-18), (*b*) printed hand-bills dated 22nd February 1962 a copy of which is marked 'B' (Ex. P-19) describing himself as Swatantra Congress candidate, (*c*) hand-bills as per copy marked 'C' (Ex. P-20) wherein he styles himself as President of Mysore Independent Congress Candidates Action Committee, (*d*) The Respondent also put up wall-posters in numerous public places as per copy marked 'D' (Ex. R-2) describing himself as Swatantra Congress Candidate. (*e*) Further more, the Respondent used the tri-colour flag of the Congress party substituting scales for the Charka at his election meetings and on the motor cars used for touring in the constituency for the purpose of canvassing. It is stated that in these several ways, the Respondent misrepresented to the electors that he was, in fact, the Congress candidate and, this misrepresentation has materially affected the result of the election.

8. The Respondent in his written statement denies to have engaged the said two lorries for conveying the electors and he is not aware of the names

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of their drivers. According to the Respondent, the petitioner has taken the numbers from some of the lorries which ply in that route and has tried to concoct a case.

9. It is true that the Respondent is the principal of the Rural College, Kanakapura, and President of the Rural Education Society, Kanakapura having been its founder. He is doing missionary service to these institutions with a view to uplift the education of the masses of the locality in particular and other parts of the State in general, and that he is not serving these institutions with any profit or any other motive. It is absolutely false that the Respondent took advantage of his position and exerted undue influence over the parents of the students of the Educational institutions threatening them with denial of promotion, free studentship and admission to the Hostel which are, in fact exclusively under the control of the Heads of the several Institutions. The Respondent is in charge of the administration and academic control of the Institutions in general and, he never interferes with the day-to-day activities of these Institutions. The seven students referred to by the petitioner are all either election workers of the petitioner or children of his election workers.

10. The petitioner did not bring to the notice of any Returning Officer at the spot regarding non-compliance of Rule No. 43 of the Conduct of Election Rules, 1961. The complaint made in this behalf is un-true and imaginary and the Respondent is not aware of any such violation at the eleven polling booths specified by the petitioner. It is worthy of note that out of these eleven polling booths, it is the petitioner who procured a majority of votes in five polling booths and equality of votes in three polling booths. Only those electors who were at the several polling stations at the closing hour were allowed to cast their votes.

11. The alleged facts relating to how the Respondent was not selected by the Election Committee of the Congress party as a candidate for Kanakapura constituency and how he described himself as Swatantra Congress party candidate are matters beyond the scope of the enquiry of this petition and are wholly irrelevant. However, the Respondent wants to state that he has been representing the people of his constituency in the Assembly from about the year 1932. As the Congress party was dominated by two rival groups, he was not selected as a candidate for Kanakapura constituency and so, he alongwith others, who had been similarly deprived of tickets maliciously, constituted a Committee for election purposes known as Mysore Independent Congress Candidates Action Committee of which he was elected the President. The Respondent went to the electorate with clean hands and informed them about the injustice that had been done to him by the Mysore State Congress Committee in the matter of selection and he was elected by the electorate only after he made himself known to them as an organiser of the new Committee on behalf of which he contested the election. The statements and speeches made at the public meetings by the Respondent clearly show that there was absolutely no misrepresentation whatsoever in this behalf. The Respondent produces in this regard a hand-bill issued by him and a copy of the letter written by him. As the petition is a result of group politics, political rivalry and jealousy, it is liable to be dismissed.

12. The petitioner has supported the allegations made by him against the Respondent in his petition in his reply filed on 12th June 1962 and has stated that, as a large number of electors in the constituency were illiterate and uneducated, they were not in a position to understand the distinction between the Congress party and the Mysore Swatantra Congress party and, this has resulted in misleading the electors. The Respondent has represented Virupakshapura constituency in the previous elections and not Kanakapura constituency. The petitioner was a Member of the Mysore Legislative Assembly during the years 1952-57 representing the same constituency and was President of Kanakapura Town Municipality and so, it is false to say that he was never a public worker and that he did not command the confidence of the electorate.

13. The following issues were framed on 14th June 1962 :—

1. (*a*) Had the Respondent hired and/or procured on payment or otherwise the lorry No. MYE-1304 driven by Nazeer Ahmed for the conveyance of electors to and from Kadasivanahalli polling station and used it for that purpose ?
   (*b*) Had the Respondent hired and/or procured on payment or otherwise the lorry No. MYE-4068 driven by Mariyappa for the conveyance of electors to and from Therubeedi polling station and used it for that purpose ?
   (*c*) If so, what is the effect of this corrupt practice on the Election ?
2. (*a*) Did the Respondent, taking advantage of his connections with the Educational Institutions, threaten with denial of promotion, free studentships and admission to the Hostel, seven students, (mentioned in the petition) of Rural High Schools at Kanakapura and Harohalli or induce their parents and other relations or record their votes for him and thus interfered with and/or attempted to interfere with the free exercise of electoral rights ?
   (*b*) If so, what is the effect of this exercise of undue influence on the Election ?
3. (*a*) Were a large number of electors admitted and allowed to record their votes after 5 P.M. at the polling stations specified in para 7 of the petition without complying with Rule 43 of the Conduct of Election Rules, 1961 ?
   (*b*) If so, has the non-compliance with the rule materially affected the Election so far as it concerned the petitioner ?
4. Did the Respondent represent himself to be a Congress candidate while in fact, he was not, and thus materially affect the result of the Election by mis-representation ?
5. To what relief, is the petitioner entitled ?

14. It is advisable to refer to the standard of proof that would be required in respect of an alleged corrupt practice, as such a charge is quasicriminal in character. Mere pre-ponderance of probability would not be sufficient in

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such cases, but it would be the duty of the petitioner to establish the charge of corrupt practice beyond all reasonable doubt. If the evidence is not conclusive and there is room for doubt, its benefit shall have to be given to the Respondent. (A.I.R. 1961 Mysore 106, 1959 Andhra Pradesh, 111).

15. Thirty-four witnesses have been examined and 29 documents have been exhibited on behalf of the petitioner, while the Respondent has stepped into the witness box and got marked Exhibits R-1 to R-7. I proceed to decide each Issue separately referring to the relevant oral and documentary evidence with respect to it.

16. *Issue No.* 1.—(*a*): P.W. 2 Sri Kunnaiah, Sub-Inspector of Police, Kodihalli was on election bandobast duty on 22nd February 1962 when he checked Hindustan Express lorry MYU 1304 at about 11-30 A.M. near Kadasivanahalli. The driver of that lorry was one Nazir Ahamed. Six passengers were found in that lorry. He filed a charge-sheet on 16th March 1962 before the Special First Class Magistrate, Ramanagaram where the driver was fined Rs. 15. Exhibit P-3 is a certified copy of the petty case register relating to the conviction of Nazir Ahamed under the Motor Vehicles Act. The witness has admitted that he filed the charge-sheet against Nazir Ahamed after having come to know the success of the Respondent in the election and that, besides an entry in a hand-book, there is no other record to show that he detected Nazir Ahamed carrying passengers on 22nd February 1962. He has denied the suggestion that he prosecuted Nazir Ahamed with a view to help the petitioner. He neither noted the names of the passengers that were found in the lorry nor did he seize the driving license and the registration certificate. The next witness examined in support of this Issue is the lorry driver P.W. 24 Nazir Ahamed. He states that somebody came to him at about 6 P.M. on the day previous to the elections and told him that voters had to be taken to the booth. He was taken to Sri Budhdas at Basavangudi and was told there that he should go to Kanakanhalli and then proceed to places directed by the Respondent in order to get voters and that he would be paid Rs. 50 towards hire. At about 10 or 10-30 P.M., he started for Kankanhalli accompanied by some person deputed by Sri Budhadas. He took the vehicle to the Hostel at Kankanhalli (Kanakapura) where the Respondent instructed him to go to Bettakunda. He left for Bettakunda at about 4 A.M. accompanied by a person deputed by the Respondent. He made three trips to Kadasivanahalli from Bettakunda which was at a distance of three miles carrying each time 30 to 40 voters. At the fourth trip when he was apprehended by the police, there were six voters in the lorry. Though P.W. 24 had been directed to appear at Ramanagaram Court on the next day, he did not do so on the ground of his being unwell. After 15 or 20 days, a constable took him to the Magistrate's Court where he stated as per Exhibit P-5. He has identified Sri Budhadas at Exhibit P-4(*e*).

17. A perusal of Exhibit P-5 would show that though this witness was asked about the charge against him relating to the carrying of six persons in the lorry, he gave the following answer to it:

> "On being asked by S. Kariyappa of Kankanhalli, I was taking persons from Bettakunda to Kadasivanahalli. I was carrying the voters. I plead guilty and I may be excused".

The charge against P.W. 24, as can be seen from Exhibit P-3, is that the vehicle was being taken towards Bettakunda from Kadasivanahalli, but the answer given by him before the Magistrate is that he was proceeding towards Kadasivanahalli from Bettakunda. This is a material discrepancy. It is interesting to note that there was no occasion for P.W. 24 to refer to S. Kariyappa in his plea of guilty without making any reference to Sri Budhadas who had hired his lorry. The suggestion of the Respondent that the statement of P.W. 24 before the Magistrate was a tutored one cannot be brushed aside lightly. In fact, the charge was under the Motor Vehicles Act and there was no necessity to refer to the purpose of the passengers being carried in the lorry. Confession is evidence against the maker and not against others. Presuming for a moment that in view of the connotation of the term 'agent' being wide in election matters, P.W. 24 was an agent of the Respondent, even then, an admission by an agent can never be treated as evidence in criminal or quasi criminal matters.

18. P.W. 24 is not in a position to give the name of the person that called him at the first instance, the name of the person who accompanied him to Kankanhalli from the residence of Sri Budhadas and the name of the person who was deputed by the Respondent to collect the voters. It is difficult to give weight to such vague evidence. Even P.W. 2 did not take down the name of the agent of the Respondent that had accompanied P.W. 24 nor the names of other passengers. This is important as mere carrying of passengers does not constitute the alleged corrupt practice, unless there is evidence that those persons were electors. P.W. 24 admits that he has no personal knowledge about the persons that he carried that day in his lorry. Though three trips had already been made by P.W. 24 carrying each time 30 or 40 persons, no witness has been examined to corroborate this evidence. When P.W. 24 was carrying in each trip 30 to 40 persons, there is no explanation forthcoming as to why in the fourth trip he was carrying only six persons. Out of these six persons, two persons were sitting by his side and four were in the lorry. Out of these four persons, two had got down seeing the jeep coming from a distance. He had a permit to carry three persons, but he did not tell that to the Police Inspector. He admits that it is usual to pick up passengers on the way after unloading the lorry. He did not tell the Police constable that caught him that Mr. Budhadas had hired his lorry. His evidence that he had told the Magistrate that Mr. Budhadas had hired his lorry is not true in view of his statement in Exhibit P-5. This shows that he is not a true witness, but is capable of twisting his evidence. One Samad was the cleaner of the lorry but his whereabouts are not known now. The petitioner has admitted that he has no personal knowledge of the voters being transported through the lorries at the instance of the Respondent.

19. As against this evidence, the Respondent has denied his having met P.W. 24 at the Hostel buildings and has stated that his feelings with the Inspector and the Sub-Inspector were strained during that period and prior to that. The Police Inspector (P.W. 1) had arrested two of his workers, *viz.*, Gaji Khan and another person on 21st February 1962 though the complaint against them was false. He had also made complaints against P.Ws. 1 and 2

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to the Home Minister and Inspector-General of Police in October 1961. He had tabled questions in the Assembly about the conduct of P.Ws. 1 and 2. It is needless to scrutinise the evidence with respect to the allegations made against the Police Inspector and the Sub-Inspector, for it is primarily for the petitioner to prove the alleged corrupt practice. As I find no iota of evidence to connect the six passengers in the lorry to be the electors of Kadasivanahalli booth, the mere fact of P.W. 24 being caught by P.W. 2 and being fined by a Criminal Court would be of no avail. It may be mentioned here that, out of these six persons one was admittedly not an elector as he happened to be the cleaner of the lorry. The evidence of P.W. 24 is such as cannot be believed without corroboration. In a sense, he is an accomplice.

20. It is urged on behalf of the petitioner that as Sri Budhadas has not been examined on behalf of the Respondent, an adverse inference should be drawn against the Respondent. I do not think that in the circumstances of the case, the non-examination of Sri Budhadas would justify an adverse inference against the Respondent. It appears that as the evidence led by the petitioner is meagre, an attempt is being made to supplement it from drawing an inference against the Respondent. It is argued on behalf of the petitioner that the Respondent has attributed improper motive to P.W. 24 and, as there is no evidence with respect to it, his evidence should be believed. It is also urged that as there is absolutely no reason for him to depose falsely against the Respondent, he is trustworthy. I think this line of reasoning to be fallacious for, want of interest, in an enquiry of a quasi-criminal nature does not by itself stamp the evidence of a witness with truth. The weight to be attached to the testimony of a witness depends upon various considerations depending upon the circumstances of each case. I do not think the evidence of P.W. 24 to be of such a high order as to justify a finding of corrupt practice against the Respondent. There is a discrepancy also in the evidence and, perhaps it has crept in due to mistake. The lorry has been mentioned in the petition as MYU while according to P.W. 24 it was MYF. As there is a possibility of this being a clerical mistake or mistake in typing, I do not want to attach much significance to it.

21. P.W. 24 has referred to 8 passengers being in the lorry during the course of the questions put to him in cross-examination. This only shows that though he had referred to only six passengers in examination-in-chief. It is just possible that, as admitted by P.W. 24, he might have picked up some passengers not paying particular attention to their number but that circumstance alone is not sufficient to connect the Respondent with it. As observed in A.I.R. 1961 Allahabad 356, it is for the petitioner to show from evidence that the persons who were carried on the conveyance were electors in the constituency from which the returned candidate was a candidate. In view of this, a bald statement of P.W. 24 that those passengers were electors cannot be accepted in view of the circumstances of the case. In view of this lacuna in the evidence, Issue No. 1(*a*) is decided against the petitioner and in favour of the Respondent.

22. Issue No. 1.—(*b*) P.W. 1 Sri J. Sunder Raj, Inspector of Police found Mariyappa driving lorry No. MYF 4068 between Maralavadi and Therubeedi

Villages at about 10 A.M. on 22nd February 1962. The driver had allowed 16 passengers to be seated in the lorry in contravention of the provisions of the Motor Vehicles Act. The driver had no driving license also. P.W. 1 registered a case against Mariyappa and Exhibit P-2 is a certified copy of Petty Cases Register of the Court of the Special First Class Magistrate, Ramanagaram to show that Mariyappa was convicted and sentenced to pay a fine of Rs. 5 on 10th April 1962 on his plea of guilty on the charge of the contravention of Rule 243 read with Section 112, Motor Vehicles Act. Exhibit P-8 is the diary of P.W. 1 for 22nd February 1962 in which there is a mention at Exhibit P-8(*a*) about Mariyappa being found carrying 16 persons in the lorry. On behalf of the petitioner, a request was made to separately mark the representation made by the driver to P.W. 1, but this was not allowed on the ground that the representation made by the lorry driver to P.W. 1 who was a Police Officer engaged in the investigation relating to an offence would be inadmissible and it can be used only for the purpose of corroborating or contradicting the testimony of the driver under Sections 145 and 157, Indian Evidence Act. I have made a separate order with respect to this law point on 3rd November 1962 and it is unnecessary to traverse the same ground.

23. Mariyappa has not been examined and the petitioner has deposed that he was not able to trace the whereabouts of Mariyappa. There is no other witness to speak to this alleged corrupt practice and so, in view of the paucity of the evidence, the Issue will have to be decided against the petitioner. P.W. 1 has been cross-examined to show that his relations with the Respondent are strained and that he had arrested one Gaji Khan, a worker of the Respondent on the day previous to the elections with oblique motive. It is unnecessary to probe into the allegations made against P.W. 1 by the Respondent, for presuming for a moment that whatever he has said in examination-in-chief is true, even then it is not sufficient to bring home the alleged corrupt practice to the Respondent.

24. Sri M. P. Somasekhara Rao, the learned Advocate for the petitioner frankly conceded that he was not in a position to press this Issue further than to refer to the evidence of P.W. 1. Further he referred to A.I.R. 1960 Supreme Court pages 200 and 717 in which what particulars would be sufficient for the corrupt practice of carrying of voters to polling station in trucks was considered. I do not think that these are in any way helpful to the petitioner in this case, as the evidence adduced by him is quite insufficient. The respondent in his deposition has stated that he has no knowledge as to who Mariyappa driver was. The petitioner has admitted that he has no personal knowledge of the voters being carried in the lorries, and he is not in a position to mention the name of any voter that was carried in the lorry, on behalf of the respondent. It is necessary to bear in mind that the diary of P.W. 1 was received in the Office of the Deputy Superintendent of Police, Channapatna on 28th February 1962 though it was written on 23rd Februray 1962. The suggestion of the respondent is that after coming to know the result of the elections, this diary was cooked up. Be what it may, as the evidence adduced is insufficient to establish the essential ingredients that constitute the alleged corrupt practice, the Issue will have to be decided against the petitoiner and,

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I accordingly decide Issue I (*b*) also against him. As a result of the above findings, the alleged corrupt practices have no effect on the election and, this is my finding on Issue I (*c*).

25. *Issue No.* 2.—(*a*) It is an admitted fact that the Respondent is the President of the Rural Education Society at Kanakapura and is the Principal of the Rural College, Kanakapura. This Society runs the Rural High Schools at Kanakapura and Harohalli. The allegation against the Respondent is that, taking advantage of his position in the Society, he interfered with or attempted to interfere with the free exercise of electoral rights by threatening the students that they would be penalised if they did not induce their parents and other near relations to vote for him and, thus committed corrupt practice under S. 123 (2) of the Representation of the People Act (R. P. Act). The evidence relating to this Issue is as under:

(1) P. W. 3 Honnegowda is a student of Rural High School, Kanakapura who states that one day the Respondent called him from the football ground and asked him to tell his father to vote for him; otherwise there would be trouble for him in geting freeship and scholarship in the College. He was studying then in final year S.S.L.C. He went to his village Bheemagondanahalli and told his father and grand-father to vote for the Respondent as he (the Respondent) would get freeship and scholarship for him. They said "let it be like that (hage agali). P.W. 4. Honnegowda is the grand-father of P.W. 3. He states that P.W. 3 told him that the Respondent wants that votes should be given to him. P.W. 4 replied that he will give vote to whomsoever that he liked. When P.W. 4 questioned P.W. 3 as to why he should vote for the Respondent, he said that as he was studying under his protection (asraya) trouble may come afterwards. P.W. 16 Munigowda is the father fo P.W. 3 whom P.W. 3 asked to vote for the Respondent saying that if he failed to do so, he would not get seat in the school. After being told like this by P.W. 3, the petitioner saw P.W. 16 and he was told about the message that the boy had brought from the Respondent. The version given by the father and the grand-father are quite different from the version given by P.W. 3. In fact, there is nothing to indicate from the evidence of P.Ws. 4 and 16 that any threat had been given to P.W. 3. Their evidence only shows the anxiety of the boy to be in the good books of the Respondent. The suggestion of the Respondent is that Munimare Gowda and Mudmaregowda are related to the petitioner and they have secured these three witnesses to support the petitioner. P.W. 4 and P.W. 16 have admitted that Munimaregowda and Mudmare Gowda are their near relatives and Mudmaregowda has married the daughter of Gurukar Rangegowda. However, they have denied the relationship of Gurukar Rangegowda with the petitioner. The Respondent states that Munimare Gowda is a close relative of the petitioner and he was working for the petitioner in the General Elections.

(2) P.W. 5 Venkatramiah was studying in S.S.L.C. Class. He had failed in the previous year. He deposes that about 10 or 12 days prior to the elections the Respondent called him while he was going to the 'matha' for taking free meal and said "you have been getting freeship and scholarship for the last three years. You ask your parents and relatives to vote for me.

If they will not do so there would be trouble for you". He communicated the threat that was given to him to his parents. P.W. 6 Sadanalliah the father of P.W. 5 corroborates the evidence of P.W. 5. It is necessary to bear in mind that according to his own admission, P.W. 5 had failed in the examination in the previous year. The suggestion of the Respondent is that P.W. 5 always moves about with Sri K. G. Sreenivasamurthy who is the Municipal President and the cousin of the petitioner P.W.5's brother is an employee in the Municipal office, and due to this, these witnesses have come forward to tender evidence in support of the petitioner.

(3) P.W. 17 Choodegowda is the father of Jayakumar. He states that his son told him that the Respondent had asked that the votes should be given to him and if it was not done, then he would not be given a seat in the Hostel. This witness admits that his brother-in-law Linge Gowda has married the daughter of one Thimmegowda who might be the brother of Gurukar Rangegowda. The petitioner and Gurukar Rangegowda are related but he cannot say whether nephew or uncle.

(4) P.W. 22 M. R. Nanjundaramaiah Setty states that the Respondent told him that he should get the votes by his parents for him; otherwise his freeship would be cancelled. P.W. 23 Kunnaiah Setty is the father of P.W. 22 who contradicts his son's evidence and deposes that his son did not tell him anything as to what would happen if the vote was not recorded for the Respondent. This contradiction is important, as the threat given by the Respondent is the matter under consideration. P.W. 23 admits that he belongs to Maralvadi Mandal Congress.

26. I think it advisable to refer to the evidence of P.W. 15 Sri K. Subba Rao, as he, the petitioner's uncle Gurukar Rangegowda and the Respondent are the founder members of the Rural Education Society, Kanakapura. The Respondent was formerly the Secretary and is now the President of the Society. The Respondent has a dominating place in the Managing Committee of the Society. The witness was also the President of the Society for about 10 or 12 years. Differences have arisen between the Respondent and the witness, as the latter has introduced politics in the Institutions. Even when P.W. 15 was the President, the Respondent had a dominating voice in the administration of the Society. Scholarships for High School students are granted by the Government Scholarship Committee on the recommendations of the several Institutions. Each High School has a Headmaster as the head of its administration. There are rules for grant of freeships to students in each school. P.W. 26 Sri C. N. Jagannath is the treasurer of the Society. He too has a grudge that the voice of the Respondent prevails in granting freeships and scholraships to the students, though there is a committee for that purpose. The petitioner (P.W. 33) is a member of the Society. He has personal experience that the voice of the Respondent prevails in matters relating to grant of half freeships and admission to the Institutions and the Hostel. According to the petitioner, scholarships are granted by a committee consisting of 22 members and since three years, he is a member of this Scholarship Committee. The contention of the petitioner is that though the Respondent is not

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in the committee which grants scholarships, it is on his recommendations that scholarships are granted.

27. As against this, the Respondent denies of his being connected with the grant of scholarships or freeships. It is the Headmasters of the High Schools concerned who are to make recommendations for scholarships. Since the last three years, no half freeships are granted to the students. The qualifications required for geting freeships are that the student ought not to have failed in the examination and the annual income of his parents should not exceed Rs. 2,400 per annum. The applications for freeships are forwarded to the District Educational Officer after scrutiny for final award. Almost all the applicants have secured freeships during the last three years at the High School at Kanakapura. There is a Committee at the District level known as the Scholarship *Ad hoc* Committee which grants scholarships. The petitioner is a member of that Committee.

28. On a consideration of the evidence referred to above, it is clear that the Respondent is not directly connected with the admissions; grant of freeships or scholarships to the students of the High Schools at Kanakapura and Harohalli. It is alleged that the threat was with respect to denying promotions, free studentship and admission to the Hostel. Though names of seven students were given in the petition, only three of them, *viz.*, P.Ws. 3, 5 and 22, have been examined. Out of these, P.W. 5 had failed in 1961 S.S.L.C. examination. There was no occasion for threatening this student with denial of promotion or refusal to grant scholarship. It would be unsafe to rely on the evidence of these three child witnesses, specially when there are grounds to presume that they have been secured due to their being interested in the petitioner on account of relationship or any other ground. It is necessary to bear in mind that influence or persuasions can validly be exercised by one person upon another and, it is only when the element of compulsion comes in that the influence becomes illegal. In the case in hand, the grievance of the petitioner appears to be that the Respondent has a dominating voice in the administration of the Society and its Institutions, but that cannot be a circumstance which can be taken into consideration in an Election petition, unless the misuse of the power is satisfactorily established. As the Headmasters of the High Schools are in charge of the administration of their Institutions, it is they that are directly concerned with promotions and admissions. There are rules for grant of freeships and the students would be governed by them. There is the Scholarship Committee of which the petitioner is also a member.

29. Against the background of these circumstances, the discrepant evidence tendered in support of this Issue cannot be relied upon. It is urged on behalf of the petitioner that Sri Narayana Rao, Headmaster had been summoned by the Respondent, but he was not examined and so, an adverse inference be drawn against the Respondent. I do not think that there is any occasion for drawing such an adverse inference in this case. I hold that Issue No. 2(a) is not proved and so, there is no occasion to give any finding with respect to Issue No. 2(b).

30. *Issue No.* 3.—Though it is stated in para 7 of the petition that there was non-compliance with rules and orders under the Representation of the

People Act, 1951 at 11 polling stations, evidence has been led with respect to 10 of them. I shall consider the evidence with respect to each booth separately.

(1) P.W. 8 Syed Mahammad deposes that he recorded his vote at Hosadurga polling station (P.S.) No. 51 at about 6 or 6-30 P.M. and that he had not been given any slip to indicate that he was to vote after 5 P.M. He also states that persons who had to vote came to the polling station till 8 or 8-30 P.M. He is the secretary of the Society in his village of which Munimare Gowda is the Chairman. He admits that as he was standing at the Aswath katte, he could not see from that place whether the people that were going to the booth and returning from it voted or not. P.W. 9 Rama Rowth gave his vote at the booth just before Sunset. There were about 50 persons at the booth when he went there. P.W. 10 Sangappa went to the booth after 6 P.M. and he was not given any slip to show that he had not voted before 5 P.M.

(2) P.Ws. 13, 14, 27 and 33 speak to what went on at Thungani P.S. No. 19. P.W. 13 Puttamadaiah has his house near the Primary school which was a polling station. Sitting in front of his house he saw that the voting continued till 8 P.M. though he himself recorded his vote at 4-30 P.M. P.W. 14 Badrigeriah voted after the lights had been lighted and he had not been given any slip or ticket for having voted at that time. P.W. 27 K. Devaraj Urs was the polling agent of the petitioner at Thungani booth. He states that the voting continued till 6-30 P.M. and that no slips were given to any person that voted after 5 P.M. The petitioner (P.W. 33) visited, on the election day, Thungani, Jakkasandra, T. Hosahalli and Aralalusandra booths and found that the polling was continued even after 5 P.M.

(3) P.Ws. 20 and 21 have deposed with respect to Jakkasandra, P.W. 20 Kalegowda went to the polling station at Jakkasandra at 4-30 P.M. and he was that the polling went on till 8 P.M. There were about 100 or 150 voters that were present at the booth at 5 P.M. and they were not given any chits. Voters from surrounding villages who came even after 5 P.M. were admitted into the booth. P.W. 21 Venkatachalaiah voted at 6 P.M. and he had not been given any chit for waiting there since 5 P.M. According to the witness, the voting continued till 8 P.M. He admits that he is working as a Congress Organiser for the last 10 years. Though he knows P.W. 20 Kalegowda, he did not see him at the polling booth.

(4) P.W. 7 Patel Nanjappa was present at T. Hosalli P.S. No. 8 on the direction of the Tahsildar, Kanakapura for identifying the voters. He deposes that the voting continued till 8-30 P.M. and that the Respondent had come to the booth at 5-30 P.M. and returned saying that the persons that were present may all be allowed to vote. The petitioner too visited the booth at 6-30 P.M. and he went away after talking with the officer. No slips had been given to the persons that voted after 5 P.M. and the voters came to the booth even till 8 P.M. The petitioner visited T. Hosalli booth and found that the voting was continued even after 5 P.M.

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(5) P.W. 11 Chinnegowda gave his vote at Doddakabballi booth No. 47 before Sunset and saw sitting at Aswathkatte voters going to the polling station till night-meal time. P.W. 18 Kempegowda recorded his vote at Doddakabballi after lamps had been lighted. He had not been given any slip of paper though he was to vote after the prescribed time. There were 25 or 30 electors at the booth when he left it. P.W. 19 Govinda Gowda also voted after Sunset and he was not given any chit. There were still 30 or 40 voters when he returned from the booth.

(6) P.W. 29 Abdul Sattar Khan has his house near Maralavadi P.S. No. 10. He saw that the voting continued till 8 P.M. He has no knowledge as to whether any slips had been given to the voters that recorded their votes after 5 P.M.

(7) P.W. 30 D. N. Thimmappa states that it was 6 P.M. when he voted at Aralalusandra P.S. No. 20. He had not been given any slip. He had reached at the booth at about 5 P.M. and he had to wait till 6 P.M. as there were 50 or 60 persons that had come for voting. This witness has not been cross-examined on behalf of the Respondent.

(8) P.W. 31 Thimmegowda gave his vote at 6-30 P.M. or 7 P.M. at Hulibele P.S. No. 37 and he had not been given any slip of paper. There were 50 or 60 persons still present for voting when he went there.

(9) P.W. 32 Shailaradhya recorded his vote at Hirendyapanahalli at about 3 P.M. There were two booths in the same building. In one booth the voting was closed at 3 P.M. while in the other it continued till 7 P.M.

(10) P.W. 12 Chikkuraiah recorded his vote after Sunset at the polling station which was located in the Primary School, Kanakapura. He had not been given any chit for recording his vote after 5 P.M. He states that people were going to give vote till 8 P.M. This witness was a candidate at two Municipal Elections on the Congress ticket.

31. P.W. 34 Sri K. G. T. Kempegowda was the Assistant Returning Officer, Kanakapura, during the last General Elections. When this witness was being examined, permission was granted to break open the sealed covers containing the diaries of the Presiding Officers. Exhibit P-9 is the Presiding Officer's diary relating to Jakkasandra P.S. No. 3 in which it is noted that 72 voters were in waiting at the time of the closing hour. [Exhibit P-9(a)]. Exhibit P-10 is the diary relating to T. Hosalli P.S. No. 8 in which there is no mention of any voters being present at the closing hour. Exhibit P-11 is the diary for Arlalusandra P.S. No. 20 in which it is recorded that the polling was brisk throughout and that a number of people waited outside at 4-50 P.M. and all of them were given a chance to vote and that the polling was closed at 7-46 P.M. Exhibit P-12 is the diary for Kanakapura P.S. No. 29 in which it is noted that the polling was commenced at 8 A.M. and was continued upto 5 P.M. and, as about 150 voters had yet to vote then, the polling was continued till 7-30 P.M. Exhibit P-13 is the diary for Hulibele P.S. 37 in which it is stated that 89 voters were present at the closing hour and the polling was continued till 6-40 P.M. Exhibits P-14 and 15 are the diaries relating to Kadasivanahalli P.S. No. 40 and Heredyapanahalli P.S. No. 42 in which there

is no mention of any electors being in waiting at the closing hour. Exhibit P-16 is the diary relating to Doddakabballi P.S. No. 47 in which it is mentioned that there were about 40 persons still to vote at 5 minutes to five and all of them were taken inside the Panchayeth hall and they were allowed to vote one by one with initialled papers. Exhibit P-17 relates to Hosadurga P.S. No. 51 in which there is no mention of the polling being continued after the closing hour. Exhibit R-5 is the diary with respect to Thungani P.S. No. 19 in which it is noted that 164 electors were waiting at the closing hour. Exhibit R-6 is the diary relating to Maralavadi P.S. No. 10 in which it is noted that 200 voters were in waiting at the closing hour. P.W. 34 states that these diaries were maintained in the official course by the Presiding officers of the polling stations in the discharge of their duties. During the course of the cross-examination, P.W. 34 states that he had instructed all the polling personnel not to allow any elector within the polling station after 5 P.M. and to allow all those to vote who were already within the polling area before 5 P.M. He admits that he had not instructed the polling personnel to issue any slips to the persons that were within the polling area at 5 P.M. and had not cast their votes by then. There can be no doubt that the polling continued in some of the polling stations even after the closing hour. Most of the Presiding Officers have noted in their diaries the fact of some electors being in waiting at the closing hour.

32. Section 57 of the Representation of the People Act directs that the Election Commission shall fix the hours during which the poll will be taken and that the total period allotted on any one day for polling at an election shall not be less than eight hours. In the instant case, the hours fixed were from 8 A.M. to 5 P.M. and there is no controversy about it. What procedure should be followed at the time of the closing of poll is laid down in Rule 43 of the Conduct of Elections Rules, 1961 and it runs thus:

> "The presiding officer shall close a polling station at the hour fixed in that behalf under section 56 and shall not thereafter admit any elector into the polling station ..... Provided that all electors present at the polling station before it is closed shall be allowed to cast their votes".

It is clear from this that no new electors are to be admitted into the polling station after 5 P.M., but those who have already reached the polling station should be allowed to record their votes. Most of the presiding Officers appear to have followed this procedure, as can be seen from their diaries.

33. The learned Advocate for the petitioner contends that the presiding officers have not followed the instructions that were given to them. Instruction No. 45 in the pamphlet issued to the presiding officers reads thus:

> "A few minutes before the closing hour for the poll, announce to all those within the limits of the polling station who are waiting to vote that they will be allowed to record their votes in turn. Distribute to all such voters initialled blank slips. Depute police or other staff to watch that no one is allowed to join them later from outside after the closing hour. Continue the poll even beyond the closing hour until all these voters have cast their votes."

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It is no doubt true that only the Presiding Officer of Doddakabballi P. S. No. 47 had issued initialled slips to the electors that had not voted till 5 P.M. and the other presiding officers had not done so. The question then arises as to whether non-compliance with such instructions would justify the declaration of a returned candidate to be void. Section 100 (1) (d) (iv) of the R. P. Act says that if the Tribunal is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void. On my enquiry, the learned advocate for the petitioner could not satisfy me that the instructions were rules or orders made under the R. P. Act. If the Election Commission or the Chief Electoral Officer has, for the sake of convenience, issued instructions to the presiding officers by publishing a pamphlet, those instructions cannot be construed as rules or orders made under the R. P. Act. As observed in A.I.R. 1961 Mysore 106 (K), before the election of a returned candidate can be declared void under Section 100 (1) (*d*) (iv), R. P. Act, it is necessary for the election petitioner to establish the contravention of any of the provision of the Constitution or any of the provisions of the Act or of the rules or orders made thereunder. Since the instructions No. 45 referred to above, has not the force of law, its contravention or non-compliance is not, in any way, material. Such instructions are only directory and not mandatory.

34. From the evidence adduced on behalf of the petitioner, it is established that in some booths the polling went on even after the closing hour and that no initialled blank slips were given to the electors that had not recorded their votes by 5 P.M. The mere fact that the voting continued after 5 P.M. involves no illegality or non-compliance of law. As for the non-issue to the voters initialled blank slips, it can only be said that an advice or instruction had been ignored by the presiding officers. The material in record is not sufficient for establishing that the electors who had come after 5 P.M. were also admitted into the polling stations and were allowed to vote. It is necessary to bear in mind that the petitioner visited polling stations at Thungani, Jakkasandra, T. Hosalli and Aralalusandra after 5 P.M., but he did not complain to the presiding officers of any booth about voters who had come after 5 P.M. being admitted into the polling stations for purposes of voting. The petitioner has not referred to instruction No. 45 in his petition, but has alleged non-compliance with Rule 43 of Conduct of Elections Rules, 1961. Rule 43 (2) says that if any question arises whether an elector was present at the polling station before it was closed, it shall be decided by the presiding officer and his decision shall be final. In the case in hand, though the petitioner visited some of the booths and his agents were present at the several booths, no question was raised before any of the presiding officers about an elector being not present at the polling station before it was closed and so, there was no occasion for the presiding officer giving his decision in the matter. In these circumstances, Issue No. 3 (*a*) is decided against the petitioner and in favour of the respondent.

35. As I have decided Issue No. 3 (*a*) against the petitioner, there is no occasion to consider Issue 3 (*b*), but by way of abundant caution I record

my finding on it also. As laid down in A.I.R. 1955 Supreme Court 233 and 1954 S.C. 513 the question as to whether the result of an election has been materially affected or not, is not a matter on which any conjecture is permissible and that it has to be established by clear and sufficient evidence. From the diaries of the presiding officers it is seen that there were 72, 150, 89, 40, 164 and 200 electors respectively at Jakkasandra, Kanakapura, Hulibele, Doddakabballi, Thungani and Maralavadi polling stations at the closing hour. This means that there were 715 electors at these polling stations at the closing hour. According to the presiding officers' diaries, there were no electors at the closing hour at Hosadurga, Aralalusandra, Hirendyapanahalli and T. Hosalli booths. The witnesses of the petitioner have stated that there were about 60 electors at each of the polling stations Hosadurga and Aralalusandra, and they have not specified any number with respect to Hirendyapanahalli and T. Hosalli. If the number of electors present at Hosadurga and Aralalusandra at the closing hour is added to the figure arrived at on the basis of the presiding officers' diaries, then the total would be 835. Difference of votes secured by the returned candidate and the defeated candidate, *viz.*, the petitioner, is 1,563 and so, in any case, even if there be any non-compliance of any rule, the result of the election, in so far as it concerns the returned candidate, has not been materially affected. The finding of Issue No. 3 (*b*) is that, presuming that there is non-compliance with the rule, it has not materially affected the election of the respondent.

36. *Issue No.* 4.—P.W. 15 Sri K. Subba Rao was one of the members of the selection committee for selecting candidates for Parliamentary and Legislative Assembly seats of Bangalore District. The petitioner and the respondent were candidates for getting the Congress ticket for Kanakapura Assembly Constituency and the selection committee gave the ticket to the petitioner. It was suggested to the respondent that he should go to his own constituency, *i.e.*, Virupakshapura, but he refused to do so. The respondent resigned from the Congress and stood as a candidate of Swatantra Congress party. While carrying on the canvassing campaign, the respondent said in meetings at Hukunda and Averahalli that he and the members of his party were genuine Congressmen and that he was out to purify the Congress. At the meetings and also on the election car the respondent displayed the Congress flag substituting the scales for the Charka. The flag that was being displayed by the respondent was similar to those that can be seen in the photograph Exhibit P-4 at 'A' and 'B'. The effect of the display of these flags was to create the impression that the respondent was a Congress candidate. Several electors asked P.W. 15 as to how they should distinguish between one candidate and the other when the respondent was using the same symbol, the same flag and was saying that he was a Congress candidate. P.W. 25 Sri Seetharam who is the Secretary of the Bangalore Rural District Congress Committee states that he received complaints that the respondent was posing himself as a Congress candidate and was using the Congress flag with the scales in place of Charka. The witness toured in the constituency and found the complaint to be true. He wrote to the Chief Electoral Officer pointing out what the respondent was doing. It is advisable to mention here that no steps were taken for getting the original letter addressed to the Chief Electoral Officer produced before the

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Tribunal. P.W. 25 got it published in Prajavani and Indian Express that the respondent had been expelled from the Congress organisation due to his having stood against the official Congress candidate. Exhibits P-6 and 7 are the extracts of the Newspapers. P.W. 26 C. N. Jagannath deposes that during the canvassing campaign made in favour of the respondent, it was being said that the respondent was more sincere and that the vote given to him would be a vote for the Congress. He also refers to the flag that was being used by the respondent. P.W. 28 C. N. L. Sastry who is the President of the Maralavadi Mandal Congress also corroborates the testimony of P.W. 26 and deposes that he complained about that to the Election Commission, India, the Chief Electoral Officer, Mysore, the Mysore Pradesh Congress Committee and the Local Circle Inspector of Police. The petitioner deposes that the respondent and Sri Budhadas were displaying the tri-colour flag with the scales in the centre similar to Exhibit P-4 (*a*) at their mettings. This had been done to falsely create an impression on the illiterate electors that they too belonged to the Congress. The illiterate elector thought as the respondent previously belonged to the Congress, he continued to represent the Congress. The respondent had been elected at the previous elections from Virupakshapura constituency.

37. The version of the respondent is that he was a member of the Mysore State Congress Committee till he resigned perhaps in December 1961. He had applied for a ticket for Kanakapura Assembly constituency, but as the majority group in the Mysore State Congress was not well-disposed towards him, he was not given the ticket. As he wanted to take the verdict of the electorate, he contested for the seat. During the election campaign he criticised many members of the Mysore State Congress for the mistakes that they had been committing. The other candidates who had not been given tickets from the Congress like him formed a group and called it Swatantra Congress Party. The members of the Swatantra Congress Party constituted a committee for election purposes known as Mysore Independent Congress Candidates Action Committee and the respondent was elected its President.

38. P.W. 15 has no personal knowledge about the photograph Exhibit P-4. Exhibit P-1 is a statement of the respondent published in the Prajavani Newspaper, dated 5th February 1962 informing the public that he had himself come out of the Congress Organisation and that he was out to purify it. Exhibit R-2 is a wall-poster in which the respondent has been described as a Swatantra Congress candidate. P.W. 15 admits that nobody during his election tour brought it to his notice that the respondent was representing himself to be the Congress candidate. Exhibit R-3 is a letter written by P.W. 25 Seetharam to the respondent on 21st July 1956 requesting to nominate him to Uttarahalli Constituency. Exhibit R-4 is said to be the reply given to Exhibit R-3 by the respondent but this has not been admitted by P.W. 25. These letters have been produced to show that the feelings between the witness and the respondent are strained. However P.W. 25 admits that the respondent is very influential in Kanakapura Taluk. The petitioner admits that he is not aware of any rule prohibiting the display of tricolour flag by any party other than the Congress party. The petitioner was not present when the

photograph Exhibit P-4 was taken. He did not attend any meetings of the Swatantra Congress party.

39. The respondent adimts that Exhibit P-18 is a hand-bill issued jointly by him and Sri Budhadas, a candidate of the Swatantra Congress party for Lok Sabha. Exhibits P-19 and 20 are hand-bills issued by him and Sri Budhadas respectively. He is not sure as to whether Exhibits P-18 to 20 were got printed by him or not. However, he did not get Exhibit P-19 printed. The respondent was confronted with documents Exhibits P-18 to 20, because his name appears in them and his symbol, *i.e.*, scales is to be found in them. He does not know who got the posters Exhibit R-2 printed. The photograph Exhibit P-4 appears to have been taken, according to the respondent, in one of the meetings held in connection with Taluk Board Elections. He states that the middle portions of the flag at Exhibits P-4 (*a*) and P-21 (*a*) are not clear. It is necessary to mention that the scales can be seen at Exhibits P-4 (a) and Exhibit P-21 (a). The learned advocate for the petitioner argued that, as the respondent is capable of telling a falsehood, his evidence should not be relied upon. I do not think that, in view of the circumstances of the case, it would be proper to apply the doctrine of "falsus in uno, falsus in *omnibus*" to the evidence of the respondent. The testimony of a party should be scrutinised applying the same principles that would be applied to the evidence of a witness. Exhibits P-22 series are the hand-bills printed at Pragati Press in support of the respondent's candidature. In the opinion of the respondent, the word "Congress" is not the monopoly of any organisation, but it only means a meeting of several persons. The respondent is to be found in the photographs Exhibits P-23 and 24, but he cannot recall the occasions on which they were taken. Sri Byatiga Bovi a Congress candidate in Taluk Board Elections in 1960 had the scales as his symbol (Exhibit P-25). The respondent is not aware of the pamphlets Exhibits P-26 to 28.

40. It is not within the scope of the election petition as to the circumstances that made the respondent sever his connections with the Congress organisation and stand as a candidate of their newly fromed Swatantra Congress party. The respondent admits that he criticised the Congress organisation and some of its members during his election campaign. Though he admits that scales was his symbol, he has denied to have displayed it at the meetings on the tricolour flag similar to the Congress. In exercise of the powers conferred by sub-rule (1) of Rule 5 of the Conduct of Election Rules, 1961, the Election Commission has published a list of symbols through S. O. 2316, dated 19th September 1961. In it, the reserved symbols for Mysore State are (1) two bullocks with yoke on (Congress) and (2) Hut (Praja Socialists). Nine other symbols have been shown as free symbols and scales is one of them. As far as the selection of the symbol is concerned, there can be no ground for the petitioner to raise any objection. The contention of the petitioner is that the tricolour flag of the Congress should not have been used substituting scales for Charka. It is not shown that the shape and form of a flag or the colour arrangement in it has been reserved for any organisation under any provision of law. The contention of the petitioner appears to be

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similar to a passing off action with respect to a trade mark. When the petitioner or the organisation which he represented had no special rights in the tricolour flag, it cannot be said that the Respondent ought not to have used it. If illiterate electors were victims of the use of the tricolour flag by the Respondent, then he cannot be blamed for it. In view of the extracts of the Newspapers that have been exhibited in the case, it is difficult to accept that the Respondent made the electors believe that he was a candidate of the Congress organisation. The very fact that he was criticising the Congress organisation and some of its members was sufficient to convey to the electors that he was not representing the Congress.

41. I asked the learned Advocate for the petitioner as to the provision of law under which misrepresentation can be made a ground for declaration of the election to be void. He candidly admitted that there was no specific provision in that regard and the matter may be brought under S. 100 (1) (d) (iii), R.P. Act, and it may be held that the reception of the votes was improper. I do not think this provision of law is applicable to such misrepresentations as alleged in this case. The learned Advocates appearing for both the parties informed me that there was a provision with respect to such misrepresentations in the erstwhile Mysore State Election Law and that that provision has not been incorporated in the R.P. Act. In these circumstances, even if it is presumed that there was some misrepresentation made by the Respondent during his election campaigns, even then that would not affect the result of the elections. However, in the instant case, in view of the Newspaper extracts produced in the case and the admitted fact that the Respondent was criticising the Congress organisation and some of its members in his election meetings, it cannot be held that he represented himself to be a Congress candidate and secured votes by misrepresentation. Issue No. 4 is decided against the petitioner and in favour of the Respondent.

42. *Issue No. 5.*—In view of the findings of Issues 1 to 4, the petitioner would not be entitled to any relief.

43. Relying on E.L.R. 9 at page 93 and 8 E.L.R. 424, it is urged on behalf of the petitioner that, as Exhibit P-22(d) is admitted by the Respondent in which votes are invoked referring to God, this Tribunal should take cognizance of it. It is advisable to note that during the course of the cross-examination, a number of documents including Exhibit P-22 series were put to the Respondent and he said that those hand-bills had been printed at Pragati Press in support of his candidature. The specific portion in the hand-bill which refers to God was neither shown to him nor was he given an opportunity to offer his explanation with respect to it. In the circumstances, it would not be proper for this Tribunal to take cognizance of a corrupt practice which has not been originally alleged by the petitioner. As observed in A.I.R. 1962 Punjab 129, the Election Tribunals are expected to keep in their mind the precise allegations in the pleadings and that a party should not be permitted to travel outside the pleadings and the Issues. In view of this, I decline to take cognizance of the commission of a corrupt practice by the Respondent on the basis of the hand-bill Exhibit P-22(d).

44. Charges of corrupt practices under S. 123(2)—Undue influence—and (5)—Hiring or procuring of vehicle for conveying the electors—have not been proved and this is the finding recorded under S. 99, R.P. Act.

45. The Respondent has incurred expenses of Rs. 16.75 nP. in this Tribunal. The fee of the Advocate is fixed at Rs. 500. In this way, the petitioner shall have to pay a sum of Rs. 516.75 nP. as costs to the Respondent.

Election petition dismissed with costs. The petitioner to pay Rs. 516.75 nP. to the Respondent towards costs.

R. HANUMANTHA RAO, *Member.*

31-1-1963.

By order,

PRAKASH NARAIN,

Secretary to the Election Commission, India.